

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ALLY FINANCIAL INC. and ALLY BANK,

Plaintiffs,

v.

COMFORT AUTO GROUP NY LLC, HESHY
GOTTDIENER, and ROUTE 206 AUTO GROUP,
LLC,

Defendants.

ORDER

20-CV-1281 (MKB) (RLM)

MARGO K. BRODIE, United States District Judge:

Plaintiffs Ally Financial Inc. and Ally Bank commenced the above-captioned action on March 9, 2020, against Defendants Comfort Auto Group NY LLC and Heshy Gottdiener, (Compl., Docket Entry No. 1), and filed an Amended Complaint adding Route 206 Auto Group, LLC as a Defendant on May 8, 2020. (Am. Compl., Docket Entry No. 9.) Plaintiffs alleged that Defendants defaulted on a series of commercial loans and financing agreements and sought both injunctive relief and monetary damages for Defendants' alleged breach of contract and breach of guaranty. (Am. Compl. ¶¶ 150–242.)

In July of 2021, Plaintiffs moved for sanctions and default “given Defendants’ repeated non-compliance with this Court’s Orders in connection with discovery and for Defendants’ overall cessation of defending this action.” (Pls.’ Letter Mot. for Sanctions and Default, Docket Entry No. 71.) The Court referred the motion to Magistrate Judge Roanne L. Mann for a report and recommendation. (Order Referring Letter Mot. dated Sept. 21, 2021.) Judge Mann recommended that the Court grant Plaintiffs’ motion to strike Defendants’ answer and enter default in Plaintiffs’ favor, (R&R Regarding Pls.’ Letter Mot. For Sanctions and Default, Docket

Entry No. 79), and the Court adopted the report and recommendation in full, (Order Adopting R&R, Docket Entry No. 80).

On January 20, 2022, Plaintiffs filed a proposed judgment granting damages to Plaintiffs in the amount of \$12,194,811.09. (Notice of Pls.' Proposed Judgment, Docket Entry No. 81.) Because the Amended Complaint did not seek a sum certain, the Court did not enter judgment based on Plaintiffs' proposed judgment, but instead referred the matter to Judge Mann to conduct an inquest on damages and attorneys' fees. (Order Referring Matter dated Jan. 24, 2022.) By report and recommendation dated August 26, 2022, Judge Mann recommended that Plaintiffs be awarded \$11,326,059.37 in total damages, \$296,794.50 in attorneys' fees, and \$400 in costs (the "R&R"). (R&R, Docket Entry No. 97.)

No party has objected to the R&R and the time for doing so has passed.

II. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App'x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) ("Failure to object to a magistrate judge's report and recommendation

within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

Accordingly, the Court awards Plaintiffs \$11,326,059.37 in total damages, \$296,794.50 in attorneys’ fees, and \$400 in costs.

Dated: September 30, 2022
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge